IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.L.P..No. 346 of 2007()

CC.1550/2004 of J.M.F.C.-I, ALUVA

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PETITIONER/COMPLAINANT:

K.J.JOY,AGED 50,S/O.JOSEPH,
KALAPARAMBATHU HOUSE,KARUMALLOOR,ALUVA.

BY ADV. SRI.S.RAJKUMAR

RESPONDENTS: ACCUSED/STATE:

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1. N.P.MUHAMMED SHEREEF,S/O.PAREED,
C.C.No.13/576, KOCHANGADI,COCHIN.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.PMM.NAJEEB KHAN FOR R1
P.P.SRI.C.M.KAMMAPPU FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 346 of 2007

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Dated this the 19th day of June, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C.No.1550/2004 on the file of the Judicial Magistrate of the First Class-I, Aluva. In the complaint it is stated that the 1st respondent borrowed an amount of Rs. 75,000/- from the petitioner and executed a demand promissory note. It is also stated that when the petitioner demanded back the amount, the 1st respondent issued Ext.P1 cheque to the petitioner for the discharge of that amount. It is further stated that when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. After complying the statutory formalities, the complaint has been filed by the petitioner alleging commission of offence punishable under section 138 of the Negotiable Instruments Act. To prove the case against the 1st respondent the petitioner himself was examined as PW1 and Exts.P1 to P5 were marked. After closing the evidence of the prosecution, the 1st respondent was questioned under section 313 Cr.P.C. He denied the allegation and stated that he had no transaction with the petitioner as alleged in the complaint. He also stated that he had some money transaction with one Surendran and Ext.P1 cheque was

given as security to him. To prove the case of the defence, DW1 to DW3 were examined and Exts.D1 to D5 were marked. After considering the entire evidence, the trial court found that the petitioner had failed to prove the transaction between him and the 1st respondent as alleged in the complaint. The trial court also found that the cheque in question was not issued to the petitioner for the discharge of any debt and it was issued to DW3 Surendran as a security in some other money transactions. To come to such a conclusion the trial court relied on the evidence of PW1, DW2 and DW3.

2. In the circumstances, this Court is of the view that the impugned judgment requires no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. /200

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ORDER

-6-2007